

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: January 23, 1985

REGION II

SUBJECT: Withdrawal of Order Issued 12/04/85, Index No. II-CERCLA-50102,
as to 5 Petitioning Respondents: Duane Marine Salvage Corporation

FROM: Douglas R. Blazey *for* William J. Librizzi, Director
Regional Counsel *for* Emergency and Remedial
Response Division

TO: Christopher J. Daggett
Regional Administrator

339503



Attached for your review and approval is a Withdrawal of Orders, to be issued in connection with the Duane Marine site in Perth Amboy, New Jersey, affecting 5 of the original 35 respondents to the above-captioned Order which you signed on December 4, 1984.

The original Order, issued unilaterally for a CERCLA removal action, named 35 respondents, among them 33 who were identified as responsible parties for the release of hazardous substances, pollutants, or contaminants to the environment from the Duane Marine facility, in their respective capacities as generator respondents. As generator respondents, the named parties were found to have arranged with the Duane Marine Salvage Corporation for Duane Marine's transport and ultimate disposal of wastes that included hazardous substances.

Certain of these 35 respondents have petitioned for withdrawal of Order No. 50102, and any subsequent amendments to that Order. Through their respective counsel or through officers of their respective corporations, these petitioning parties have submitted information for EPA's consideration that supplements the information upon which EPA based its original decision to issue the Order.

After a careful review of the entire record, we have determined that we have no evidence at this time that would merit a conclusion that the 5 petitioning parties listed below are responsible parties under CERCLA for the environmental conditions to which EPA's December 4, 1984, Order was addressed. Our determination is based upon our satisfaction with the petitioners' demonstration of the following facts:

1. Bell Laboratories, Division of American Telephone & Telegraph Co., arranged to have a mixture of No. 6 fuel heating oil and ground water transported to the Duane Marine facility for disposal. (The Duane Marine Corporation operated as an oil spill cleanup facility in

addition to its function as a hazardous waste disposal facility.) Neither No. 6 fuel oil nor ground water is a hazardous substance. Section 101(14) of CERCLA exempts petroleum from classification as a hazardous substance.

2. Bird & Son, Inc., had Duane Marine pick up a mixture of oil and water. The oil was a Mobil Thermal Oil, Mobiltherm 603. Mobiltherm 603 is a petroleum product which contains no additives that would make it a hazardous substance under CERCLA. No other materials were sent to Duane Marine by Bird, to our knowledge.

3. NL Industries, Inc., retained Duane Marine to handle an oil spill. The oil was No. 6 fuel oil. To our knowledge, NL sent no substance other than the spilled oil, oil mixed with rain water, and oily debris from the cleanup. These were not hazardous substances under CERCLA.

4. The Rusty Scupper Restaurant retained Duane Marine to clean up and dispose of spilled fuel oil and oil-stained gravel and debris from the roof of the newly constructed restaurant. This was, as far as we know, the sole transaction between Rusty Scupper and Duane Marine. The oil was No. 1 fuel oil for heating, and is not a hazardous substance under CERCLA.

5. The Township of Mahwah was inappropriately billed for the cleanup of an oil spill resulting from a motor vehicle collision on a highway within the township limits. The Township of Mahwah was not in any way involved as a generator of any hazardous substances ever sent to Duane Marine.

For the above particular reasons in each case respectively, and because we are at this time satisfied with the documentation presented by each petitioner of these facts, we have determined that none of these 5 parties was appropriately named as a respondent in the Duane Marine Order.

Accordingly, we recommend that our Orders of December 4, 1984, and the supplemental Order of December 18, 1984, be withdrawn as to the 5 respondents named in this memorandum.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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IN THE MATTER OF :
BELL LABORATORIES, DIVISION :
OF AMERICAN TELEPHONE & :
TELEGRAPH CO., :
BIRD & SON, INC., :
NL INDUSTRIES, INC., : WITHDRAWAL OF ORDERS AS TO
RUSTY SCUPPER RESTAURANT, and : CERTAIN RESPONDENTS
TOWNSHIP OF MAHWAH, :
Index No. II-CERCLA-50102
Respondents. :
Proceeding Pursuant to §106 :
of the Comprehensive Environ- :
mental Response, Compensation :
and Liability Act, 42 U.S.C. :
§9606 :
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FINDINGS

1. On December 4, 1984, an Administrative Order, Index No. II-CERCLA-50102 (hereinafter, "the Order"), was issued to the above-captioned Respondents and 30 other Respondents by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States by §106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

("CERCLA"), 42 U.S.C. §9606(a), delegated to the Administrator of the EPA by Executive Order 12316, 46 Fed. Reg. 42237 (August 14, 1981), and redelegated to the Regional Administrator, EPA Region II, on March 17, 1983. Under the terms of the Order, the Respondents were instructed to undertake certain immediate corrective actions at the Duane Marine Salvage Corporation facility in Perth Amboy, New Jersey, an abandoned hazardous waste disposal facility.

2. On December 18, 1984, a letter supplementing the Order (hereinafter, "the Supplemental Order") was issued to the above-captioned Respondents and 30 other Respondents.

3. On various dates subsequent to December 4, 1984, a number of Respondents (hereinafter, "the objecting Respondents") appeared in this proceeding by their respective counsel or through officers of their respective corporations and submitted information to EPA that supplemented information already in the possession of the Agency which initially formed the basis for including such corporations as Respondents in the above-captioned proceeding. The objecting Respondents requested that the Order of December 4, 1984, be withdrawn as to them in that, for reasons adequately supported in documents submitted by each of the objecting Respondents to the EPA, they were not responsible parties for the release or threatened release of hazardous substances, pollutants,

or contaminants to the environment from the Duane Marine facility.

4. Subsequently, between December 4, 1984, and January 21, 1985, communications were exchanged between counsel or representatives for the objecting Respondents and staff of the Office of Regional Counsel and the Emergency and Remedial Response Division, EPA Region II, in which the objecting Respondents set forth reasons why they believed the information in the possession of EPA, as supplemented by additional information or explanations provided by the objecting Respondents, failed to establish that they were potentially responsible parties under CERCLA for the environmental conditions to which EPA's December 4, 1984, Order was addressed.

5. The documents submitted by the objecting Respondents have been evaluated by EPA's Office of Regional Counsel and by the Emergency and Remedial Response Division, and the respective Directors of those offices have recommended that the proceeding initially commenced by EPA should be withdrawn as to certain of the objecting Respondents.

WHEREFORE, on the basis of a consideration of the entire record of this proceeding, the above-captioned Order and the Supplemental Order of December 18, 1984, are hereby WITHDRAWN with respect to the following Respondents:

1. Bell Laboratories, Division of American Telephone & Telegraph Co.
2. Bird & Son, Inc.
3. NL Industries, Inc.
4. Rusty Scupper Restaurant
5. Township of Mahwah

Effective this 23 day of January, 1985.


CHRISTOPHER J. DAGGETT
REGIONAL ADMINISTRATOR

1/23/85
DATE

U.S. Environmental Protection Agency
Region II